

From: [Anthony J. Majestro](#)
To: [2804 Discovery, MDL; MDL 2804; ct2_opioid_team@mail-list.com; Track2OpioidDefendants@ReedSmith.com; Wicht, Jennifer](#)
Cc: [Allison Skinner; Christopher Wilkes](#)
Subject: Re: CT2 - non-retained expert disclosures
Date: Monday, September 21, 2020 4:15:25 PM
Attachments: [image001.png](#)

EXTERNAL E-MAIL - From amajestro@powellmajestro.com

Jennifer,

Thank you for the heads up. We will advise shortly regarding our intentions with regard to Dr. Zachary Hansen, Steve Murray, and Dr. Mitzi Payne.

We are aware of FRCP 26(a)(2)(C) and have discussed this issue with your counterparts on several occasions. Each “hybrid witness” we disclosed (save those referenced below) have been deposed already in this litigation. I respectfully refer you to *Airport Auth. v. Travelers Prop. Cas. Co. of Am.*, 849 F.3d 355 (7th Cir. 2017) (holding the parties “had ample opportunity to depose these witnesses”) and advise that you bring this matter to the Court sooner rather than later. In that vein, we note that any objection would appear to be untimely as these disclosures were made over six weeks ago and this is the first time you have challenged the sufficiency of the disclosure. *See* Local Rule 37.1(c). (“...Motions to compel or other motions in aid of discovery not filed within 30 days after the discovery response or disclosure requirement was due are waived, and in no event provide an excuse, good cause or reason to delay trial or modify the scheduling order.....”).

Copying SM Wilkes and Allison Skinner to expedite resolution leading up to and/or during the pre-trial conference.

---Tony

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From: "2804 Discovery, MDL" <mdl2804discovery@motleyrice.com>

Date: Monday, September 21, 2020 at 2:26 PM

To: MDL 2804 <MDL2804@motleyrice.com>

Subject: FW: EXTERNAL-CT2 - non-retained expert disclosures

From: Wicht, Jennifer <JWicht@wc.com>

Sent: Monday, September 21, 2020 6:19:29 PM

To: Paul Farrell Jr <paul@farrell.law>; Kearse, Anne <akearse@motleyrice.com>

Cc: 2804 Discovery, MDL <mdl2804discovery@motleyrice.com>; zz-Track 2 Opioid Defendants (S) <Track2OpioidDefendants@ReedSmith.com>

Subject: EXTERNAL-CT2 - non-retained expert disclosures

Dear Paul & Anne:

Plaintiffs' disclosures of non-retained experts do not provide the information required under Fed. R. Civ. P 26(a)(2)(C) to allow those witnesses to provide opinion testimony. Even if Plaintiffs belatedly were to provide adequate disclosures, the case schedule would not allow Defendants to depose all of those witnesses on their late disclosed opinion testimony before trial. Accordingly, Defendants will take the position that the identified witnesses should be precluded from providing opinion testimony at trial.

Three people on Plaintiffs' disclosure have not yet been deposed in their capacity as fact witnesses. If Plaintiffs intend to call those witnesses at trial for their fact testimony, pursuant to our stipulation at ECF No. 724, Defendants respectfully request fact deposition dates in the beginning of October for Dr. Zachary Hansen, Steve Murray, and Dr. Mitzi Payne.

Thanks,

Jen

Jennifer G. Wicht

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